UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,467	07/29/2003	Nobuo Kawamura	500.42992X00	4706

24956	7590	09/16/2005

EXAMINER
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ART UNIT	PAPER NUMBER
2165	

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 July 2003</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-18</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-18</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>29 July 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

       1.☒ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date <u>06/22/05</u>.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

Double Patenting

1.   A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-18 of this application conflict with claims 1-18 of Application No.

10/628,516. 37 CFR 1.78(b) provides that when two or more applications filed by the

same applicant contain conflicting claims, elimination of such claims from all but one

application may be required in the absence of good and sufficient reason for their

retention during pendency in more than one application. Applicant is required to either

cancel the conflicting claims from all but one application or maintain a clear line of

demarcation between the applications. See MPEP § 822.

Claims 1-18 are provisionally rejected under 35 U.S.C. 101 as claiming the same

invention as that of claims 1-18 of copending Application No. 10/628,516. This is a

<u>provisional</u> double patenting rejection since the conflicting claims have not in fact been

patented.

2.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-18 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-19 of copending Application No. 10/650842. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: Although the conflicting claims are not identical, they are not patentably distinct from each other because claims of U.S. Patent Application No. 10/650,842 contain every element of claims 1-18 of the instant specification.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other

copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA

1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Mohan

et al. U.S. Patent no. 5,280,611.

As per claims 1-3, 9, 10-11, 17-18, Mohan et al. disclose "A disaster recovery

method in which at occurrence of a failure in a primary database processing system,

database processing is continuously executed by replacing the primary database

processing system with a secondary database processing system" by providing

mechanisms for efficiently recovering data from failure of a shared store in a multi-

computer data sharing system including the shared store, stable data storage, and a

plurality of independently-executing, transaction-oriented database systems of the write-

ahead logging type which are connected to the stable storage and to the shared store

and which use the shared store for trans-system data caching. It is a related object to

put forward a method that utilizes the transaction log data of the individual DBMS'S to

bound recovery of data in the shared store (See Mohan et al. Col. 3, line 65-Col. 4, line

9). In particular, Mohan et al. disclose --receiving access request--; --determine whether the access request is a write request or read request -; -- determine whether the write request are log information indicating contents of a database -- (See Mohan et al. Cob. 9, line 47-Col. 10, line 29); -- determining whether the access request is a read request - (See Mohan et al. Col. 10, lines 30-Col. 11, line 7); -- converting position information indicated in the log information into physical position information in the primary storage unit --; --modifying data in a database area of the primary storage unit and transmitting the access request to a storage unit of a secondary system---(see Mohan et al. Col. 9, lines 23-56). The Applicant should duly note that in Mohan et al. the conversion is achieved through the procedure for writing a page (position information indicated in the log information) in the share storage (physical position information) since when the write request is executed and stored, the requested log information is transformed from a logical information to a physical information in the storage unit. As to -- a control processing portion for receiving an access request - Mohan et al. provides mechanism for controlling a write request or a read request (See Mohan et al. Figures 4-5 and corresponding text).

As per claims 4-8, and 12-16, most of the limitations of these claims have been noted in the rejection of claims 1-3, 9, 10-11, 17-18. Applicant's attention is directed to the rejection of claims 1-3, 9, 10-11, 17-18 above. In addition, Mohan et al disclose the claimed features of -- determine whether or not log information received according to a preceding write request received before the access request includes log information to

modify data as an object of the read request; and modifying, when the log information thus received includes log information to modify the data of the read request, the data of the read request according contents of log information --; --modifying the data using log information selected from the log information; modifying the data of the database are for each physical device-- (Figures 7-8-, Col. 11, line 32-Col. 12, line 2)., --transmitting a write request of log information and access request-- and corresponding text). (See Mohan et al. Figures 4-5 and corresponding text).

Points of Contact

4.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Apu M. Mofiz whose telephone number is (571) 272-4080. The examiner can normally be reached on Monday – Thursday 8:00 A.M. to 4:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached at (571) 272-4146. The fax numbers for the group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Apu M. Mofiz
Primary Patent Examiner
Technology Center 2100

September 07, 2005